



PUBLIC NOTICE

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CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PETITION FOR DECLARATORY RULING RELATING TO COMMISSION'S JURISDICTION OVER INTERSTATE FAX COMMUNICATIONS

CG Docket No. 02-278

Comments Due: 30 Days After Publication in the Federal Register
Reply Comments Due: 50 Days After Publication in the Federal Register

On November 7, 2005, The Fax Ban Coalition (the "Coalition") filed with the Commission a joint petition for declaratory ruling.¹ The joint petition raises issues concerning the scope of the Commission's jurisdiction over interstate communications under the Telephone Consumer Protection Act of 1991 ("TCPA").² In particular, the Coalition asks the Commission to: 1) affirm that, under its general grant of exclusive authority to regulate interstate communications, the Commission has exclusive authority to regulate interstate commercial fax messages; and (2) find that Section 17538.43 of the California Business and Professions Code, and all other State laws that purport to regulate interstate facsimile transmissions, are preempted by the federal TCPA, 47 U.S.C. § 227.³ In this Public Notice, we seek comment on the issues raised in the Coalition's joint petition.

The Coalition asserts that States lack jurisdiction to regulate interstate fax communications.⁴ According to the Coalition, Congress granted exclusive jurisdiction to the Commission over "all interstate and foreign communication" under the Communications Act of 1934.⁵ The Coalition argues that exclusive federal regulation of interstate commercial fax transmissions is consistent with congressional intent, 47 U.S.C. Section 227(e)(1), and with prior Commission decisions.⁶ In addition, the Coalition contends that individual states' attempts to regulate interstate communication have resulted in varying fax

¹ See The Fax Ban Coalition, Petition for Declaratory Ruling, filed November 7, 2005 ("Petition"). The Fax Ban Coalition characterizes its membership as a diverse group of small and large businesses and other organizations active in a variety of industries. Coalition members include bankers, health care providers, magazine publishers, trade show operators, travel agents, attorneys and insurance agents.

² Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227.

³ Petition at 1.

⁴ Petition at 8.

⁵ See Petition at 8 (*citing* 47 U.S.C. § 152).

⁶ Petition at 10.

regulation that is not only inconsistent with Congressional intent and the optimal goals of the TCPA, but extremely burdensome to the individuals, companies and other organizations that rely heavily on fax technology to conduct business. Accordingly, the Coalition maintains the Commission should preempt all State laws purporting to regulate interstate fax transmissions and assert exclusive jurisdiction over such regulation.⁷

In addition, the Coalition argues that on October 7, 2005, California enacted a law that conflicts with the fax requirements of the TCPA. The Coalition contends that California's new law contains the text of Section 227 of the Communications Act, without the Junk Fax Prevention Act of 2005 ("JFPA") amendments,⁸ and applies that language to any person sending faxes into or out of the state.⁹ Consequently, the Coalition maintains that the California law effectively eliminates the established business relationship ("EBR") exception to the prohibition on unsolicited faxes in the JFPA. The Coalition urges the Commission to declare that the Commission has exclusive jurisdiction to regulate interstate commercial fax messages and all State efforts to do so are preempted.¹⁰

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments in this proceeding on or before the 30th day after publication of this Public Notice in the Federal Register, and reply comments may be filed on or before the 50th day after publication of this Public Notice in the Federal Register. When filing comments, please reference CG Docket No. 02-278. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

⁷ Petition at 15.

⁸ Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005).

⁹ Petition at 17.

¹⁰ Petition at 19.

Parties who choose to file by paper must send an original and four (4) copies of each filing. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-B204, Washington, DC 20554.

This proceeding shall be treated as a "permit but disclose" proceeding in accordance with the Commission's *ex parte* rules, 47 C.F.R. § 1.1200. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554, (202) 418-0270. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their web site: www.bcpiweb.com or by calling 1-800-378-3160.

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FOR FURTHER INFORMATION CONTACT: Erica McMahon, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 202-418-2512 (voice), Erica.McMahon@fcc.gov.

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